

**UNITED STATES-DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/154,646 09/17/98 CUPP

C P97.2391

IM22/0815

EXAMINER

HILL & SIMPSON  
A PROFESSIONAL CORPORATION  
85TH FLOOR SEARS TOWER  
CHICAGO IL 60606

HENDRICKS, K

ART UNIT	PAPER NUMBER
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1761

*8*

DATE MAILED:

08/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.	Applicant(s)
09/154,646	
Examiner	Group Art Unit 174e1

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on \_\_\_\_\_.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 1-24 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-24 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 6 1/2  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Allowable Subject Matter***

Applicant is advised that the Notice of Allowance mailed January 3, 2000, is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a Deposit Account.

Prosecution on the merits of this application is reopened. The indicated allowability of claims 1-24 is withdrawn in view of the newly discovered reference(s) to Gelfman. Rejections based on the newly cited reference, as well as others previously of record, follow.

It is noted that these references and impending rejections were discussed with applicants' representative on May 22, 2000, as well as suggestions for amending the claims, but did not result in an agreement at that time.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 6-7, 13-15 and 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gelfman et al.

Gelfman et al. disclose a dry soft canine biscuit comprising a denatured/gelled protein source and carbohydrate source (farinaceous and/or vegetable material), with insoluble fiber and about 5-15% of a humectant, including glycerin (col.'s 7-8). The denaturization and gelling is formed from the heat during extrusion. The final biscuit pieces have a moisture content of "less than or equal to about 15 percent by weight and preferably about 10 to about 12 percent by weight" (col. 9, lines 39-43). "The extruder material is cut into pieces or particles of [sic] having a diameter or granulation of between about 1/8 inch [3.17 mm] and about ½ inch [12.7 mm], preferably 3/16 inch" (col. 12, lines 19-23). At column 12, the reference states that when the composition contains vegetable protein to replace some or all of the meat protein, the product will have "a bulk density of about 15 to about 20 lbs. per cubic foot", which equates to 240-320 kg/m<sup>3</sup> (instant claims 6, 18). Insoluble fiber is not specifically mentioned as an ingredient; however, the farinaceous materials described at column 10 naturally contain some amount of fiber. For example, wheat generally contains 2.3- 5.6% total dietary fiber, with 1.7% of that insoluble, including cellulose. Corn flour has 15% insoluble fiber, including cellulose. (pg. 481, 484). Lorenz et al. "Handbook of Cereal Science and Technology", Dekker Press, 1991). Although this does not reach the threshold of "about 2% to about 15%" (instant claims 4-5,8-12,16-17), the instantly-rejected claims are anticipated by the reference. The recitation of the phrase "in the form of a cat kibble" is given little patentable weight, especially given the further description of this phrase in the claims as simple terms of measurements.

Claims 1-20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Simone et al.

Simone et al. disclose an edible pet food product comprising a matrix which comprises cellulose (insoluble) fiber, gelatinized starch and protein components (see col. 3), and a humectant

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such as glycerin at a concentration of about 1 to 15% (col. 5). The dried sections of this product were then subdivided into pieces which were 2.75 inch in length, 1 inch wide, and .25 inch thick, for the final product (col. 8). This product is formulated for administration to a pet animal. Thus, the claimed method is anticipated by the reference, as the claim recites measurements of "at least 6 mm". Simone et al. also teach that the cellulosic fiber materials of the pet food are used in the range of about 20-50% by weight of the final product (i.e. cellulosic materials such as corn cob, etc., not necessarily cellulose levels of 20-50%). Both wheat and corn sources are also used as the starch. Given that wheat generally contains 2.3- 5.6% total dietary fiber, with 1.7% of that insoluble, including cellulose, and corn flour has 15% insoluble fiber, including cellulose, (pg. 481, 484. Lorenz et al. "Handbook of Cereal Science and Technology", Dekker Press, 1991), and used in the amounts provided, this would be expected to give the product a cellose, and/or other insoluble fiber, level within the range instantly claimed. A density rating is not provided, however, given the fact that the remaining reference teachings fall within the boundaries of the instant claims, one of ordinary skill in the art would expect this to be an inherent property of the product. Finally, contrary to applicants' arguments in paper #6 of 12-17-99, Simone et al. teach that the moisture content of the final product can be dried "to adjust the moisture level to ~~about 10~~ to about 30% by weight" (bottom of column 5, col. 7, lines 19 and 27 as "dried" thereafter). The recitation of the phrase "in the form of a cat kibble" is given little patentable weight, especially given the further description of this phrase in the claims as simple terms of measurements.

Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Hand et al.

Hand et al. teach of a chewy dry pet food, which is in the form of pellets, for both cats and dogs (col. 1). The product comprises a cohesive structural matrix containing proteins, starches, carbohydrates and fiber such as cellulose (col. 5). The starch is gelatinized ("plasticized"). The dried pellets thus produced have a moisture level of about 5-11% (col. 2, col. 7-8). At column 5, the reference states that the product may be in any of several shapes, and is preferred as a disc-

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shaped pellet having a thickness of about 0.32 to 0.70 inch (about 8mm to 17mm), and the example product was cut into about 12mm (0.5 inch) thick pellets to be consumed by a dog. Finally, the product has a density ranging from "about 10 to about 35 lbs/ft<sup>3</sup>" (160 to 560 kg/m<sup>3</sup>). Hand et al. does not teach the use of a humectant.

### *Conclusion*

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

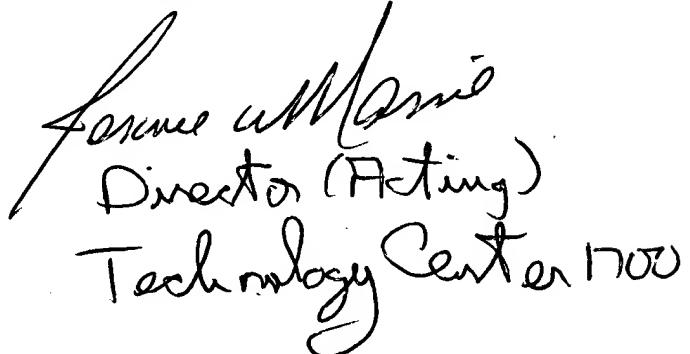
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached at (703) 308-0756. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



KEITH HENDRICKS

PRIMARY EXAMINER



Jerome W. Morris  
Director (Acting)  
Technology Center 1700